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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,907	01/26/2004	Patrick Mitchel Howard Lumley	SIM.07/D1	2787

25871 7590 02/24/2005

SWANSON & BRATSCHUN L.L.C.
1745 SHEA CENTER DRIVE
SUITE 330
HIGHLANDS RANCH, CO 80129

EXAMINER

RAO, G NAGESH

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/764,907	Applicant(s) LUMLEY ET AL.	
	Examiner G. Nagesh Rao	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/04/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Claim Rejections - 35 USC § 102

1. Claims 1-3 rejected under 35 U.S.C. 102(b) as being anticipated by Froeschke (US Patent No. 4,623,307).

Froeschke 307 teaches a device for extruding flowable substances, and the capability for the device to act like a diffuser, allowing for liquid and viscous materials to flow through (column 1 lines 50-65).

With respect to claims 1-3 Froeschke 307 is comprised of a “nozzle” bar which reads on claimed invention’s “diffuser” bar and is formed straight and disposed parallel to the axis of rotation which is comparable to claimed “elongated body” (column 1 lines 46-47). **The “nozzle” bar is centered along a groove on the body part of the inner container**, where said groove is anticipating said **“centering device”** and **inner container reads on said “bore”** of applicant’s claimed invention (column 1 lines 47-49). Please note the prior art shows in Figure 2 a **“bar” (25)** that rests on a **“groove” (26)**, which is within an **“inner container” (3)**. The “inner container” is interpreted as a type of **“bore”**.

The use of the applicant’s “diffuser-bar” is just a recitation for intended use in pastillation machines.

Claim Rejections - 35 USC § 103

2. Claims 4-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Froeschke (US Patent No. 4,623,307) in view of Lambert (US Patent No. 3,748,998).

Froeschke 307 does not address the material composition of the bar.

Lambert 998 teaches the construction of an “air-bar” from metal for air diffuser systems. It is taught that these types of bars are constructed to withstand high temperatures (column1 lines 7-10 and 23-30).

Therefore it would be obvious to one with skill in the art to modify the Froeschke 307 bar with the teachings of Lambert 998 by using metal as the choice of material, **so that it may be durable and heat-resistant**, which in turn saves time and reduces waste if the material in question has to be constantly disposed and replaced.

3. Claims 6-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Froeschke (US Patent No. 4,623,307) in view of Wark (US Patent No. 6,588,598 B2).

With respect to claims 6-7 Froeschke 307 nozzle bar lacks the “tabs arrangement” of applicant’s claimed diffuser bar.

Wark (US Patent 6,588,598 B2) demonstrates the use of tabs on devices containing bars as means of locking and supporting the bars in place (column 4 lines 48-56 and figure 1).

To one with ordinary skill in the art the tabs of Wark are seen as an equivalent to the tabs of claimed invention in helping center the bar in place. It would be obvious to incorporate the tabs into Froeschke's 307 bar, replacing the "centered groove", as a means of enhancing the structural arrangement, so that the metal is safely secured within the "inner container".

Conclusion

Applicant's arguments filed 2/4/2005 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will


be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Nagesh Rao whose telephone number is (571) 272-2946. The examiner can normally be reached on 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech can be reached on (571) 272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GNR


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